att to ER 61-1944

HOLD FOR RELEASE
MON MAR 13 1961 AM

87th Congress
1st Session

COMMITTEE PRINT

ORGANIZING FOR NATIONAL SECURITY

THE PRIVATE CITIZEN AND THE NATIONAL SERVICE

STUDY

SUBMITTED TO THE

COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE

BY ITS

SUBCOMMITTEE ON NATIONAL POLICY MACHINERY
(PURSUANT TO S. RES. 20, 87TH CONGRESS)

Printed for the use of the Committee on Government Operations

U.S. GOVERNMENT PRINTING OFFICE
66571 WASHINGTON : 1961

COMMITTEE ON GOVERNMENT OPERATIONS

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington
SAM J. ERVIN, JR., North Carolina
HUBERT H. HUMPHREY, Minnesota
ERNEST GRUENING, Alaska
EDMUND S. MUSKIE, Maine
KARL E. MUNDT, South Dakota
CARL T. CURTIS, Nebraska
JACOB K. JAVITS, New York

WALTER L. REYNOLDS, *Chief Clerk and Staff Director*

SUBCOMMITTEE ON NATIONAL POLICY MACHINERY

HENRY M. JACKSON, Washington, *Chairman*

HUBERT H. HUMPHREY, Minnesota
EDMUND S. MUSKIE, Maine
KARL E. MUNDT, South Dakota
JACOB K. JAVITS, New York

J. K. MANSFIELD, *Staff Director*
ROBERT W. TUFTS, *Chief Consultant*
BAYLESS MANNING, *Special Consultant*
RICHARD E. NEUSTADT, *Special Consultant*
DOROTHY FOSDICK, *Professional Staff Member*
BREWSTER C. DENNY, *Professional Staff Member*
HOWARD E. HAUGERUD, *Professional Staff Member*
RODERICK F. KREGER, *Minority Counsel*

FOREWORD

Throughout our history we have been well served by distinguished private citizens who have answered the call to national duty.

Elihu Root, Henry Stimson, and James Forrestal served on active duty in peace and war. The contributions of the Lovetts, the Achesons, and the McCloys have been no less great.

Today's inheritors of this great tradition of public service bear solemn responsibilities. So much depends on so few. Theirs is the main burden of leadership in providing for the common defense and advancing the cause of individual liberty. They must spark and bestir the Nation to do its best.

From the outset of its nonpartisan inquiry into the effectiveness of our governmental processes for developing and executing foreign and defense policy, the Subcommittee on National Policy Machinery has given close attention to the problems faced by private citizens called upon to undertake tours of duty in key national security posts. It has taken extensive public testimony on this matter.

In time of hot war, we sweep aside impediments to national service. We are now in a cold war whose outcome will be as final for the Nation as a shooting war. This struggle makes our Government's requirements for executive talent virtually open ended. We need excellence wherever it can be found, whether inside the Government or outside the Government.

Yet, today, we often make it unnecessarily hard for private citizens to undertake Government assignments.

This, the fourth in a series of staff reports being issued by the subcommittee, suggests ways and means of reducing barriers which stand in the way of private citizens called to national duty.

HENRY M. JACKSON,
Chairman, Subcommittee on National Policy Machinery.

FEBRUARY 28, 1961.

CONTENTS

ORGANIZING FOR NATIONAL SECURITY

THE PRIVATE CITIZEN AND THE NATIONAL SERVICE

THE PROBLEM

A government's ultimate resource is the people who work for it. The excellence of our foreign and defense policies depends upon the excellence of the millions of people serving our Government in the area of national security.

Those manning the posts of national security leadership bear the heaviest responsibility for the safety of our Nation and the future of freedom. The officials concerned are those in the top positions of the Departments of State and Defense and in key national security jobs in other agencies and offices.

Many of these posts are occupied by officials drawn from the career services. A larger number, however, are filled by citizens temporarily in Government service, who come from and return to private life—the business world, labor organizations, the professions, and university and research centers.

A President, in making these key appointments, should of course avail himself of the immense reservoir of skills found inside the Government. People of great ability will not be attracted to permanent Government careers if they are barred from posts of high responsibility.[1]

Yet the private citizen in the national service will always play a critical role in our American system.

He is personally chosen by the President himself or his Cabinet chiefs. He is a trusted lieutenant in making the Presidential will effective through the vast and sprawling reaches of the executive branch.

He may bring to his job some special combination of skill and experience. He may have unique abilities in space science, atomic energy, economic policy, or the like.

He has fresh and different perspectives, and the ability to ask "Why?" He is not beholden to formulas of the past.

He can build public confidence in an administration's policies. Appointments made with due regard to various regions and groups symbolize the fact that the President speaks and acts for all the people. A President seeking broad-based support for his foreign and defense policies can strengthen his hand if he invites members of the opposition party to join his administration.

The problem is this: How to make the quality of appointments of private citizens to national service keep pace with the spiraling complexity and difficulty of foreign policy and defense problems.

[1] Much should be done to make the career services a better source of candidates for top appointive posts in the national security area. See an earlier subcommittee staff report: "The Secretary of State and the National Security Policy Process" (January 1961).

Administrations of both parties have encountered formidable difficulties in persuading outstanding citizens to come to Washington—and in keeping them there. Both the turndown and turnover rates have been unsatisfactorily high.

The causes of the problem are many. Some are deeply rooted in the traditions of our society. Others include the adverse and unintended side effects of laws and rules aimed at desirable objectives. One such example is the body of conflict of interest restraints, designed to protect the Government against the use of public office for private gain.

THE CONFLICT-OF-INTEREST LAWS

The conflict-of-interest laws, as now written, place needless obstacles in the path of citizens asked to accept Government posts.

Persons of outstanding ability, because of these laws, have found it necessary to turn down Government jobs. A much larger number have discouraged employment overtures from the Government because of fears of conflict-of-interest problems.

Probity cannot be legislated. Yet effective laws and regulations will always be needed to keep officials from placing themselves in compromising positions, and to deter, and if necessary penalize, the rare person who may be tempted to use his official power for private advantage.

The conflict-of-interest laws are intended to serve this purpose. Enacted over the course of a century, seven such statutes are now on the books. One prohibits a Federal officer from acting for the Government in business transactions in which he has a personal economic interest. Five prohibit Government employees from working for outsiders in their relations with the Government; of these, two apply after employees leave the Government. The last of the statutes bars private compensation for Government work.

These laws are disjointed, overlapping, ambiguous, and improperly focused. They are anachronistic—addressed in many respects more to the problems of the 1860's than the 1960's.

Literal compliance with the statutes would in some cases lead to absurdities, so they are often tacitly ignored or else circumvented through casuistry.

To criticize the present laws is not to minimize the problem with which they deal. It is real and serious. The conduct of Government officials must meet the test of unimpeachable integrity.

But the existing statutes sorely need amendment, consolidation, updating, and strengthening. Patchwork is not enough; the job should be tackled as a whole.

Both the Congress and the bar have sponsored searching studies of this matter. More recently the administration appointed a commission to make recommendations to the President on the problem of ethics in government, with particular reference to conflict of interest questions.

The administration should promptly submit to the Congress a comprehensive legislative program for modernizing this body of law. The task merits doing during this session of the Congress.

The part-time consultant

The past generation has witnessed a radical increase in the Government's use of part-time consultants in the area of national security

and other fields. Any overhaul of the conflict-of-interest statutes should give close attention to the intermittent employee.

Consultants often work for the Government only a day or two a month. Yet as members of top advisory groups, trouble shooters on spot assignments, and experts with unique skills and experience, they are very important in shaping our foreign and defense policies.

Existing statutes now in force make it extremely difficult for the Government to secure the services of certain types of consultants. If these laws were strictly construed, and if more persons were aware of them, their deterrent effect would be greater still.

The heart of the difficulty lies in the failure of present-day law to recognize the special problems of the occasional consultant.

Take, for example, the statutes prohibiting outside compensation of Government employees. A consultant working for the Government a week or two a year can scarcely sever his economic ties with his regular business or profession. This being so, the legal restrictions against outside compensation are either ignored in practice or else bypassed through erratic and improvised exemptions.

Or take the statutes barring certain activities of Federal employees after they have left the Government. When does the postemployment period begin for a standby consultant who may advise the Government four or five times a year? More important, why should he accept a consultancy if he thereby runs the risk of disruptions in his regular business?

To be sure, consultancies can in certain conditions be abused by those who would pursue private gain or seek to exert covert and wrongful influence on Government policies. The law and administrative regulations should effectively guard against such abuses. Indeed, we require more precise and sophisticated safeguards than exist presently.

But the statutes should be refined to deal with the real danger. The intermittent consultant should not be arbitrarily and indiscriminately swept under a network of outdated general restraints serving only to deny the Government the expert assistance it needs in modern conditions.

The trials of the lawyer

An updating of the conflict-of-interest statutes should also take account of the special problem of the Government in persuading lawyers to accept Government posts.

The law has been an unusually rich source of top-level national security officials. Yet today's outmoded statutes make it peculiarly difficult to recruit members of the bar.

Five of the general conflict-of-interest statutes aim at preventing Government employees from acting on behalf of other persons in their business relations with the Government. Since it is largely the legal profession that acts in this representative capacity, the impact of these laws falls mainly on lawyers.

The lawyer's problem is compounded by the fact that a law firm must practice in the form of a partnership. A lawyer remaining in a partnership after accepting a Government post is subject to the conflict-of-interest laws both because of what he may do and also what his partners may do. Thus the partners cannot engage in activities denied the lawyer without subjecting him, and possibly even the partnership as a whole, to the consequences of unlawful behavior.

A lawyer accepting a full-time Government job can meet this problem by resigning from his firm, and in virtually all cases, this is what he should do.

In addition to this disruption in his profession, the lawyer, and his future partners as well, are faced with sweeping statutory disqualifications for 2 years following his tour of duty and return to private practice. Restraints are needed to keep the lawyer from switching sides on matters on which he worked while in Government service. Yet existing restraints, while not going far enough in some cases, go too far in others. The present-day statutes badly need reworking, primarily to lend specificity and clarity to the scope of the lawyers' postemployment disqualifications. As the laws now stand, they limit the Government's range of selection in recruiting lawyers for full-time positions.

The deterrent effect of the statutes, however, is far greater in the case of lawyers asked to serve the Government on a part-time basis. Here the conflict-of-interest statutes have often proved an absolute bar.

The lawyer-adviser perhaps works for the Government no more than a week or two a year, and he obviously cannot be expected to resign from his private practice. But the conflict of interest consequences for him, and for his partners also, are now the same as if he worked for the Government full time. Little wonder in these circumstances that lawyers by the score are forced to decline consultancies.

A recent case illustrates the absurdities that can result: A practicing lawyer who is also an amateur art authority regretfully declined an appointment as an unpaid adviser to the Federal Commission of Fine Arts. Acceptance would arguably have required either his resignation from his law firm or withdrawal of the firm from antitrust cases, tax problems, and all other legal work involving the Federal Government.

This kind of episode can be serious when it occurs in the area of national security, as it does many times. Lawyers, particularly those whose backgrounds include earlier full-time Government experience, can render signal help as consultants. Yet the conflict statutes in many cases deny the Government their services.

The urgent need is for clearly defined legislative provisions which will enable the partners of an intermittent consultant, and the consultant himself, to engage in activities unrelated to his consultantship without the danger of running afoul of the conflict statutes.

Retirement plans

Can a private citizen serving a tour of duty in the Government legally continue to participate in retirement and group insurance plans of his regular employer? The answer is now in doubt. A strict reading of the conflict-of-interest statutes may invite the conclusion that continued participation in such plans represents a form of outside compensation forbidden under the law. If so interpreted, the law virtually forecloses the possibility of accepting appointment to Government office, since few can afford to lose their equity in such programs.

It should be made clear that citizens accepting Government assignments can continue to participate in the retirement, group insurance, and similar plans of their former employers.

THE PROBLEM OF STOCK DIVESTMENT

In recent years the Senate Armed Services Committee has required candidates for high Pentagon posts to divest themselves of stocks whose retention the committee believed to be inconsistent with the proper discharge of the nominee's official duties. The stocks owned, for the most part, have been those of defense contractors or companies working in fields related to defense.

The committee now has no good yardsticks for determining what conditions to impose upon the appointee. The portfolio of each nominee tends to be considered as an individual case. Appointees, although they may be forced to sell stock, are permitted to obtain or acquire other types of securities or real estate holdings.

As a deterrent to Government service, the stock divestment requirements fall heavily upon two groups: Corporate officers with holdings in their own company, and officials who are owner-managers of closely held family corporations. To the first group, compulsory divestment may bring heavy economic loss. To the second, it may also mean the abandonment of a particular business career, not only for him but his children.

There are two problems: (1) How to formulate better guidelines for the executive branch, the Senate, and nominees in cases involving potential conflicts of interest, toward the end of predictability and uniform treatment; and (2) how to handle the divestment problem without imposing Draconian penalties upon nominees while at the same time guarding the public against favoritism in official decisions.

The members of the Senate Armed Services Committee are themselves deeply concerned with finding better ways of dealing with stock divestment problems. A special subcommittee is currently studying the matter.

THE DUAL COMPENSATION STATUTES

The so-called dual compensation statutes offer another illustration of a body of law adopted for one objective in the past but serving today to hamper the Government in recruiting top national security talent.

In broad, the law now says that retired Regular officers can serve the Government as full-time civilian officials only in Senate confirmation posts, or if they are retired for physical disability. Further, this limited group of retired officers who are allowed to accept civilian jobs must in most instances waive their retirement pay, waive their civilian pay, or else accept a limitation of $10,000 on their combined annual income.

These statutes purport to keep a retired officer from drawing two Government salaries. But actually, the two Government checks involved are very different. One is a salary check. The other is for retirement benefits earned over a 20- or 30-year career in the Armed Forces.

The laws not only discriminate against retired officers; they discriminate between them. They fall far more heavily upon retired Regular officers than upon retired Reserve officers.

There are retired Regular military officers, still at the height of their professional powers and possessing valuable skills, who could make major contributions in civilian national security posts. But the

so-called dual compensation laws now deny the Government their services in most cases, or else permit them to work only under conditions which can be regarded as inequitable and unfair.

Mr. Roger Jones, the former Chairman of the Civil Service Commission, put it this way to the subcommittee:

> Why * * * should we deny ourselves of their services and deny them another career * * * when they still have 20 years of useful life ahead of them? I think it makes no sense at all.

Retired Regular officers frequently accept jobs in private employment little different from those they might have had in a Government civilian post—usually at a greater ultimate cost to the Government, for the Government is the customer of the outside employer.

It is sometimes argued that relaxation of the postretirement employment ban would result in too many officers being appointed to jobs now held by civilians, particularly in the Department of Defense. Ways can and should be found to prevent abuses and discrimination against civilians in job appointments.

An enormous Government investment has been poured into the training and experience of an outstanding retired military officer. In the present state of national need, this investment cannot be permitted to be thrown away.

The dual compensation laws should be reviewed and amended. One possibility meriting careful study, for example, is that of suspending retirement payments during periods of civilian service but providing for later compensatory credits.

THE OFFICIAL IN MIDCAREER

The person in midcareer is in many ways the private citizen whose services the Government needs the most. He may be in his late thirities or forties. He is at the very height of his vigor and powers. He is bold and innovative.

Yet the midcareer official, so much needed by the Government, is also generally the hardest to get. The relative sacrifices required of him in accepting a Government post may be of a different order of magnitude from those demanded of a successful executive nearing retirement age.

He and his family are probably living up to, or beyond, their income. There are mortgages to repay, heavy insurance bills falling due, and children approaching college age. He is probably only part way up the promotion ladder in his own profession. He may be on the very threshold of much greater responsibility and income. But competition for advancement is keen.

He may be at the point where he can least afford additional expenses or a reduction of income. He may also be at the make or break stage in his profession. The prospect of leaving his regular employer at this juncture, and losing money in the process, is often for him simply out of the question.

Mr. Marion Folsom, of the Eastman Kodak Co., put it this way in telling the subcommittee why younger business executives are reluctant to accept Government assignments:

> What I found as the principal reason * * * was the fear on the part of the younger executive that, regardless of

promises by the company, he would find upon his return that he might have lost an opportunity for advancement. While I would contend that the executive should benefit from the experience and thus might be able to advance faster, my arguments were not generally convincing.

Actually, there is considerable evidence that the job a middle-ranking executive takes when he leaves the Government is often considerably better than the one he had before entering it. The problem of losing out in his regular employment, however, cannot be lightly dismissed. Especially in the case of a single proprietorship, a private professional practice, or a small company, it is extremely difficult to argue persuasively for an extended tour of duty in Washington.

Any improvement of this situation depends primarily upon employers—not the Government. They—whether universities, business enterprises, labor organizations, or professional firms—must come to realize that they will periodically be called upon to contribute to the Nation's security by releasing some of their best personnel for national service, and welcoming them back. And the case can rest upon more than patriotism. In many cases, the employer profits from the new skills and perspectives acquired through Government work.

For the person in midcareer, the problem may be a simple matter of cash. Relatively small amounts of money may be decisive in resolving the issue for or against Government service.

Mr. Roger Jones told the subcommittee that $20 million annually, prudently applied to adjustments in the top salary grades, would make it dramatically easier for the Government to enlist the help of private citizens, and to retain outstanding career officials in its service.

Another practical step, costing extremely little, would be to defray more of the out-of-pocket expenses normally incurred by those accepting Government assignments of limited duration. These consist of moving bills, and the like. Unlike private employers, the Government does not pay for legitimate expenses so incurred. It should. The administrative problem of preventing abuses is certainly not insuperable.

THE MACHINERY OF RECRUITMENT

The recruiting of citizens for top national security posts has normally proceeded in a way too casual to be satisfactory. Lists of prospective nominees are often haphazardly compiled; the element of chance—the accidental phone call, the unexpected encounter—heavily colors the selection process; agencies engage in competitive bidding for talent; forward planning is rare.

Some caution is necessary, however, in prescribing remedies. Every administration ought to follow its own style in seeking key officials. So, too, recruiting techniques well suited for one agency may not work in another. A goodly measure of informality and flexibility in finding candidates for key positions is desirable.

This is why proposals to establish a central White House recruiting office, together with elaborate registers of available executive and professional talent, must be viewed with some skepticism. It is highly probable that such an office, though it started small, would grow, and that procedures for priorities and clearances adopted in the name of efficiency would in time become encumbrances.

And how useful, moreover, would such an executive pool really be? Few private citizens of top caliber seek temporary Government appointments in the abstract: They respond to the concrete challenge of a specific job. If the right person asks them at the right time to take the right job, they accept. A day before, they would probably have ignored a form letter asking: "Are you available for Government service?"

The recruiting process for top national security officials should never be bureaucratized.

TURNOVER

Few businesses could avoid bankruptcy if the turnover rate of their ranking officers compared with that of the executive branch.

This problem, which has long plagued administrations of both parties, is of special concern in the area of national security. Foreign policy and defense problems are very different from those encountered in a private business or profession. The technical content of jobs is often high. An official needs correspondingly long periods of apprenticeship to achieve journeyman status.

Mr. Robert Lovett told the subcommittee of the problem of the Department of Defense:

> It takes a long time for an able man, without previous military service of some importance and experience in government, to catch up with his job in this increasingly complex Department. At a guess, I would say he could pay good dividends to the Government in about 2 years. Meanwhile, of course, he is becoming a more valuable asset each day. To lose him before, or just as he becomes productive is manifestly a serious waste of the effort that went into his training.

Last year, on the initiative of this subcommittee, the Senate unanimously adopted a resolution expressing its concern with the turnover problem.[2]

Nothing can be done to stop an official from resigning if he so decides. But it is highly desirable that candidates for national security posts give advance assurances that they intend to serve at the pleasure of the President and their department chiefs.

THE PUBLIC VOCATION

It is urgent that we remove unnecessary legal and administrative roadblocks to national service. This study has suggested certain steps which can be taken toward that end.

Obviously there are other substantial deterrents to the acceptance of Government posts. The most apparent of these is the disproportionately low level of Government executive salary scales as compared with those which can be commanded by able people in private life.

Yet other deterrents lie deeply embedded in the values of our American society.

Public service is still held in low repute in some quarters. It is deemed by some, however wrongly, a haven for the lazy or incom-

[2] See S. Res. 338, 86th Cong., 2d sess., and accompanying report entitled "Resolution Expressing Concern of Senate over Turnover in Administrative and Policymaking Posts."

potent, those unwilling or unable to withstand the competitive rigors of private life.

Many citizens find the prospect of Government service uncongenial for different reasons. The high public official works under the klieg lights of the Congress and the press. And the Government's sheer size, its built-in checks and balances, and the plain complexity of the problems it faces, guarantees that the frustration quotient of public service will be inevitably high.

It is quixotic to imagine that the frustrations peculiarly associated with Government service can ever be eliminated. But they can be reduced and made more tolerable.

Men rise to challenge, to leadership, and to responsibility. When great movements are stirring and there are battles to be won, when there is vigor and a sense of going somewhere at the top, when men are given a job to do, the authority they need, and are held personally accountable for results—then Government service becomes a privilege sought, not a chore avoided.

○

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

UNCLASSIFIED | CONFIDENTIAL | SECRET

CENTRAL INTELLIGENCE AGENCY

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	INITIALS	DATE
1	Legislative Counsel		
2			
3			
4			
5			
6			

	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

25X1

I showed this to [redacted] and he suggested you prepare a thank you note for DCI's signature and return it with the attached today.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
O/IG/rm	10 March

Approved For Release 2003/10/22 : CIA-RDP65B00383R000200050016-0

UNCLASSIFIED | CONFIDENTIAL | SECRET

FORM NO. 1 APR 55 237 Replaces Form 30-4 which may be used. (40)

U. S. GOVERNMENT PRINTING OFFICE : 1955—O-342531